Brady
12-208

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 315.

SOLOMON SOLOMON, SAMUEL SOLOMON, AND HENRY SOLOMON, PLAINTIFFS IN ERROR,

vs.

CHESTER A. ARTHUR, COLLECTOR OF THE PORT OF NEW YORK.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

FILED OCTOBER 17, 1877.

SUPREME COURT OF THE UNITED STATES.

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1 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the judges of the circuit court of the United States for the southern district of New York, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said circuit court, before you, or some of you, between Solomon Solomon, Samuel Solomon, and Henry Solomon, plaintiffs, and Chester A. Arthur, defendant, a manifest error hath happened, to the great damage of the said plaintiffs, as is said, and as appears by their complaint, we, being willing that such error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the justices of the Supreme Court of the United States at the Capital in the city of Washington, together with this writ, so that you have the same at the said place before the justices aforesaid on the second Monday of October, 1877, that the record and proceedings aforesaid being inspected, the said justices of the Supreme Court may cause further to be done therein, to correct that error, what of right and according to the law and custom of the United States ought to be done.

Witness the honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, this eleventh day of November, in the year of our Lord one thousand eight hundred and seventy-six, and of the Independence of the United States the one hundred and first.

[SEAL.] JOHN I. DAVENPORT,
Clerk of the Circuit Court of the United States of America for the Southern District of New York, in the Second Circuit.

The foregoing writ is hereby allowed.

ALEX. S. JOHNSON,
Cir. J.

2 (Indorsed:) U. S. Supreme Court. Solomon Solomon et al., pl'ffs in error, vs. Chester A. Arthur, def't in error. Writ of error. Stanley, Brown & Clarke, att'ys for pl'ffs in error, 16 Wall st. Filed No. 11, 1876. Original.

Due service of a copy of the within is hereby admitted.
N. Y., Nov. 11, 1876.

GEORGE BLISS,
U. S. Att'y. P.

UNITED STATES OF AMERICA,
Southern District of New York, ss:

I, John I. Davenport, clerk of the circuit court of the United States of America for the southern district of New York, in the second circuit, by virtue of the foregoing writ of error, and in obedience thereto, do hereby certify that the following pages, numbered from four to twenty-
3 seven, inclusive, contains a true and complete transcript of the record and proceedings had in said court in the case of Solomon Solomon, Samuel Solomon, and Henry Solomon, plaintiffs in error, against Chester A. Arthur, defendant in error, as the same remain of record and on file in said office.

In testimony whereof I have caused the seal of the said court to be hereunto affixed at the city of New York, in the southern district of

New York, in the second circuit, this third day of October, in the year of our Lord one thousand eight hundred and seventy-seven, and of the Independence of the said United States the one hundred and second.

[SEAL.] JOHN I. DAVENPORT,
Clerk.

4 (71.)

U. S. circuit court for the southern district of New York, in the second circuit.

Pleas before the judges of the circuit court of the United States of America for the southern district of New York, in the second circuit, at the United States court buildings in the city of New York, of the term of April, 1876, to wit, of the 6th day of October, in the year of our Lord one thousand eight hundred and seventy-six.

Witness the honorable Alexander S. Johnson, one of the judges of the said circuit court.

JOHN I. DAVENPORT,
Clerk.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

Be it remembered, that heretofore, to wit, on the 16th day of February, 1875, in October term, A. D. 1874, before the judges of the circuit court of the United States of America for the southern district of New York, in the second circuit, at the United States court buildings, in the city of New York, came Solomon Solomon et al., by Stanley, Brown & Clarke, their attorneys, and brought into the said court, before the aforesaid judges thereof, then there, their certain declaration against Chester A. Arthur, defendant, being in custody, &c., of a plea of trespass on the case upon promises, which said declaration follows in these words, that is to say:

5 THE UNITED STATES OF AMERICA,
Southern District of New York, ss:

Circuit court of the United States for the southern district of New York, in the second circuit, of the October term, in the year one thousand eight hundred and seventy-four.

SOLOMON SOLOMON ET AL.
vs.
CHESTER A. ARTHUR.

And now Solomon Solomon, Samuel Solomon, and Henry Solomon, copartners composing the firm of Solomon Brothers, plaintiffs in this suit, come into court and by Stanley, Brown & Clarke, their attorneys, give the court now here to be informed that heretofore, to wit, on the 14th day of May last past, this action was commenced in the superior court of the city of New York, according to the laws of the State of New York and the rules and practice of said court, in favor of the said plaintiffs against the defendant herein, upon the causes of action hereinafter set forth, and the summons therein filed with the clerk of said
6 court; that the defendant afterwards, by his attorney, George Bliss, esq., duly appeared in said action, and thereupon, on the 27th day of June, in the year one thousand eight hundred and seventy-four,

the said action was duly removed by writ of certiorari for further prosecution into this court according to the act of Congress in such case made and provided; and the clerk of the said court did thereupon return the said writ with the said summons and duly file the same in this court, which allegations the defendant admit to be true. Wherefore let the further proceedings and trial in this action be continued in this court.

And the said plaintiffs, by their attorneys, complain of said defendant of a plea of trespass on the case for promises, for that whereas said defendant on 13th day of May, eighteen hundred and seventy-four, at New York City, in the district aforesaid, was indebted to said plaintiffs' in the sum of one thousand dollars, lawful money of the United States of America, for duties on merchandise, to wit, manufacturers of
7 mixed materials, part silk and part cotton, imported into and entered at the collection district of the United States for the city of New York, on or about the first day of January, 1874, and on divers days thereafter and until March 1st, in the year one thousand eight hundred and seventy-four, in the following vessels, to wit: Donau, from Bremen, Jan. 19, 1874; The New York, from Bremen, Jan. 9th, 1874, and America, from Bremen, Feb'y 2, 1874, unlawfully demanded, exacted, and received at said New York City by the said defendant, then collector of the customs for said district, under color of a law of the United States for the collection of duties on imports, and paid by the said plaintiffs under protest and appeal in writing in due form of law. And being so indebted, he, the said defendant, in consideration thereof afterwards, to wit, on the same day and year last aforesaid, at the place aforesaid, undertook, and then and there faithfully promised the said plaintiffs well and truly to pay unto the said plaintiffs the said
8 sum of money when he, said defendant, should be thereunto afterwards requested.

And whereas, also, the said defendant, afterwards, to wit, on the same day and year last aforesaid, at the place aforesaid, was indebted to the said plaintiffs in the further sum of one thousand dollars, lawful money of the United States of America, for money before that time lent and advanced by said plaintiffs to said defendant, and at the special instance and request of the said defendant; and for other money by the said plaintiffs before that time paid, laid out, and expended for the said defendant, and at the like request of the said defendant; and for other money by the said defendant, before that time had, and received to and for the use of the said plaintiffs. And being so indebted, the said defendant, in consideration thereof, afterwards, to wit, on the same day and year last aforesaid and at the place aforesaid, undertook, and then and there faithfully promised the said plaintiffs, well and truly to pay unto the said plaintiffs the said sum of money in this count mentioned, when he should be thereunto afterwards requested.

Nevertheless, said defendant (although often afterwards re-
9 quested so to do) has not paid said sums of money or any or either of them, or any part thereof to the said plaintiffs, but to pay the same or any part thereof to the said plaintiffs has hitherto refused and still does refuse, to the damage of the said plaintiffs of one thousand dollars, and therefore the said plaintiffs bring suit, &c.

STANLEY, BROWN & CLARKE,
Attorneys for the Plaintiffs.

(Endorsed:) U. S. circuit court. Solomon Solomon et al. vs. Chester A. Arthur. Declaration to George Bliss, esq., def't's att'y. Feb. 16, 1875.

10 *Plea.*

United States circuit court, southern district of New York.

CHESTER A. ARTHUR
ads.
SOLOMON SOLOMON & AL.

And the said defendant, Chester A. Arthur, by George Bliss, his attorney, comes and defends the wrong and injury, when, &c., and says that he did not undertake and promise, in manner and form as the said plaintiffs in this suit have above thereof declared against the said defendant, and of this he puts himself upon the country; and the said plaintiffs do the like, &c.

GEO. BLISS,
Defendant's Attorney.

To STANLEY, BROWN & CLARKE, Esq.,
Plaintiff's Attorneys.

(Endorsed:) U. S. circuit court. C. A. Arthur ads. S. Solomon & al. Plea. Geo. Bliss, attorney for defendant.

Due service of a copy of within is hereby admitted.
11 New York, Feb., 1875.
STANLEY, BROWN & CLARKE,
Pl'ff's Att'ys.

You will please take notice that the plea of the defendant in the above cause, of which the within is a copy, was this day filed in the office of the clerk of the U. S. circuit court for the southern district of New York.

New York, Feb. 18, 1875.
Yours, &c.

GEO. BLISS,
Defendant's Attorney.

To STANLEY, BROWN & CLARKE, Esq.,
Plaintiffs' Attorneys.

12 Therefore the issue above joined is ordered to be tried at a circuit court appointed to be held at the United States court rooms on the 1st Monday of April, A. D. 1876. And now, to wit, on the 27th day of April, A. D. 1876, being as yet of said April term, before the Hon. William J. Wallace, sitting as circuit judge, come the said parties by their attorneys, and the said judge before whom said issues were tried hath sent here his record had before him, in these words, to wit:

Afterwards, to wit, on the same day & place, before the said judge, come the plaintiff and defendant by their attorneys, and the jurors of the jury also come, who, to speak the truth in the matter within contained, being duly chosen, tried, and sworn upon their oaths, say that said defendant did not undertake and promise in matter and form as said plaintiffs have above declared against him, and they refuse to assess any damages upon the defendant, but give them their costs and charges in this suit expended, and for those costs and charges the sum of

13 Therefore it is considered that the said defendant do recover against the said plaintiffs their costs and charges by them about

their suit in this behalf expended, by the said court now here adjudged to the said plaintiffs, and with their assent, which said costs and charges in the whole amount to forty-eight dollars and ninety-seven cents.

And the said defendant in mercy, &c.

Judgment this 7th day of October, 1876.

J. M. DEUEL,
Dep'y Clerk.

(Endorsed:) U. S. circuit court. S. Solomon et al. vs. Chester A. Arthur. Judgment record. George Bliss, U. S. attorney. U. S. No. 9, p. 467. Filed Oct. 7, 1876.

14 *Engrossed bill of exceptions.*

Circuit court of the United States for the southern district of New York, in the second circuit.

SOLOMON SOLOMON, SAMUEL SOLOMON, & HENRY SOLOMON,
vs.
CHESTER A. ARTHUR.

Afterwards, to wit, on the 27 day of April, 1876, at a stated term of this court begun and holden at the city of New York, to wit, on the first Monday of April, 1876, before the honorable William J. Wallace, district judge of the United States for the northern district of New York, appointed to hold the said circuit court according to the form of the statute in such case made and provided, the aforesaid issue so joined as between the said parties as aforesaid, as by the record more fully appears, come on to be tried by a jury duly empannelled and sworn for that purpose, the said plaintiffs being represented by Stephen Y.
15 Clarke, esq., and the defendant by H. E. Tremaine, esq.

And in the course of the trial the said counsel for the plaintiffs did take and allege sundry exceptions to the rulings and charge of the court, and to the refusals of the court to give certain instructions to the jury as then and there prayed for by them, which said exceptions are hereinafter severally set forth.

To maintain the said issues on the part of the plaintiffs, counsel for the said plaintiffs offered in evidence a certain stipulation as follows:

It is agreed that the following facts shall be admitted in evidence upon the trial of this case, and that neither party shall offer any other evidence. Plaintiffs are partners in business, and as such partners imported and made entry thereof at the port of New York in January, 1874, and December, 1873, certain goods manufactured of silk and cotton. The defendant, the collector of the port, exacted upon these goods a duty of fifty per centum ad valorem, which rate of duty
16 the plaintiffs paid under protest, the substantial part of which protest is as follows: claiming that under existing laws said goods are only liable to a duty of thirty-five per cent., because said goods are provided for at that rate by the acts of March 2d, 1861, sec. 22, July 14, 1862, sec. 13. This protest was filed in due time, was followed by an appeal to the Secretary of the Treasury, and the Secretary having affirmed the decision of the collector this suit was brought in due time.

The goods in question were composed of silk and cotton, in varying proportions, the warp being all cotton and the filling partly silk. It is admitted by the plaintiff for the purpose of this case, that the silk was

the component material of chief value. Said goods generally are known in trade and commerce as goods made of mixed materials, but each kind thereof is also known by its specific name. If the plaintiffs are entitled to recover, they are entitled to the difference between thirty-five
17 and fifty per cent., which amount is $461.75 gold, with $75.40 interest in currency.

Dated N. Y., April 27, 1876.

GEORGE BLISS,
U. S. Att'y for Defendant.
STANLEY, BROWN & CLARKE,
Att'ys for Pl'ffs.

And thereupon, the evidence being closed on both sides, the counsel for the said defendant moved the court to instruct the jury to find a verdict for the defendant, and the counsel for the plaintiffs moved the court to instruct the jury to render a verdict for the plaintiffs.

And thereupon the court instructed the jury to render a verdict for the defendant.

Whereupon the counsel for the plaintiffs did then and there, on behalf of the said plaintiffs, except to the decision of the court instructing the jury to render a verdict for the defendant, and did also then and there except to the refusal of the court to instruct the jury to render a verdict for the plaintiffs.

18 And because none of the said exceptions so offered and made to the opinions, instructions, and decisions of the court do appear upon the record of the said trial; therefore, on the prayer of the said plaintiffs by their counsel, the said judge has to this bill of exceptions put his seal nunc pro tunc as of the 27 day of April, 1876.

WM. J. WALLACE,
U. S. District Judge.

(Endorsed:) Circuit court of the U. S., so. dist. of New York. Solomon Solomon et al., plaintiff, against Chester A. Arthur, defendant. Engrossed bill of exceptions. Stanley, Brown & Clarke, att'ys for pl'ffs, 16 Wall st., New York.

I have no objections to within bill. July 15, 1876.

GEO. BLISS,
U. S. Att'y.

19 Know all men by these presents that we, Samuel Solomon and Julius Binge, are held and firmly bound unto Chester A. Arthur in the sum of two hundred and fifty dollars, to be paid to the said Chester A. Arthur, his executors, administrators or assigns, for the payment of which well and truly to be made we bind ourselves and each of us, our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents, sealed with our seals and dated the day of November, in the year of our Lord one thousand eight hundred and seventy-six.

Whereas Solomon Solomon, Samuel Solomon, and Henry Solomon, as plaintiffs in error, have prosecuted a writ of error issuing out of the Supreme Court of the United States, to reverse the judgment of the circuit court of the United States for the said southern district of New York, bearing date the 7 day of October, 1876, in a suit in which said Solomon Solomon, Samuel Solomon, and Henry Solomon are
20 plaintiffs, against said Chester A. Arthur, is defendant:

Now, therefore, the condition of this obligation is such that if

the above-named plaintiffs in error shall prosecute said writ of error to effect and pay all damages and costs which shall be awarded against them as such plaintiffs in error therein if they shall fail to make said writ of error good, then this obligation shall be void, otherwise the same shall be and remain in full force and effect.

SAMUEL SOLOMON. [L. S.]
JULIUS BINGE. [L. S.]

Sealed and delivered and taken and acknowledged this 4 day of Nov., A. D. 1876, before me.

MELVIN BROWN,
Notary Public, N. Y. City & Co.

UNITED STATES OF AMERICA,
Southern District of New York, ss:

Samuel Solomon and Julius Binge, severally being duly sworn, doth depose and say each for himself, that he resides in the southern district of New York; that he is worth the sum of five hundred
21 dollars over and above all his just debts and liabilities.

SAMUEL SOLOMON.
JULIUS BINGE.

Sworn to this 4 day of Nov., A. D. 1876, before me.

MELVIN BROWN,
Notary Public, N. Y. City & Co.

This bond approved as to form and amount and sufficiency of surety. Dated New York, Nov., 1876.

ALEX. S. JOHNSON,
Cir. J.

(Endorsed:) U. S. circuit court for the southern district of New York, in the second circuit. Solomon, Solomon, et al., plaintiff in error, vs. Chester A. Arthur, defendant in error. Bond for damages and costs on writ of error. Stanley, Brown & Clarke, att'y for plaintiff in error. Filed this 11th day of Nov., 1876.

22 *Assignment of errors.*

Supreme Court of the United States, of October term, in the year of our Lord one thousand eight hundred and seventy-seven.

SOLOMON SOLOMON, SAMUEL SOLOMON, AND HENRY SOLOMON, PLAINTIFFS IN ERROR,
vs.
CHESTER A. ARTHUR, DEFENDANT IN ERROR.

Afterwards, to wit, on the second Monday in said term, before the justices of the Supreme Court of the United States at the Capital in the city of Washington come the said Solomon Solomon, Samuel Solomon, and Henry Solomon, by Stanley, Brown & Clarke, their attorneys, and say that in the record and proceedings aforesaid there is error in the several rulings of the court to which exception has been taken, and that by the record aforesaid it appears that judgment aforesaid, in form aforesaid given, was given for the said defendant against the said plaintiffs, whereas by law of the land the said judgment ought to
23 have been given for the said plaintiffs in error, against the said defendant in error, and the said plaintiffs pray that the judgment

aforesaid, for the errors aforesaid, and other errors in the record and proceedings aforesaid, as the same appear more fully therein, may be reversed, annulled, and altogether held for nothing, and that they, the plaintiffs, may be restored to those things which they have lost by reason of said judgment.

STANLEY, BROWN & CLARKE,
Att'ys for Pl'ffs in Error.

S. G. CLARKE,
Of Counsel.

(Endorsed:) U. S. Supreme Court. Solomon Solomon et al., plaintiffs in error, against Chester A. Arthur, defendant in error. Assignment of errors. Stanley, Brown & Clarke, attorneys for pl'ffs in error, 16 Wall street, New York. Filed Nov. 14, 1876.

24 *Joinder in error.*

Supreme Court of the United States.

SOLOMON SOLOMON, SAMUEL SOLOMON, AND HENRY SOLOMON, PLAINTIFFS IN ERROR,
vs.
CHESTER A. ARTHUR, DEFENDANT IN ERROR.

And afterwards, to wit, on the second Monday of October, in October term, in the year one thousand eight hundred and seventy-seven, the said Chester A. Arthur, by Stewart L. Woodford, his attorney, freely comes here into court and says, that there is no error either in the record or proceedings aforesaid, or in the giving of the judgment aforesaid, and he prays that the said Supreme Court of judicature before the justices thereof, now here, may proceed to examine as well the record and proceedings aforesaid as the matters aforesaid above assigned for error, and that the judgment aforesaid given be in all things affirmed, &c.

STEWART L. WOODFORD,
Att'y for Def't in Error.

(Endorsed:) U. S. Supreme Court. Solomon Solomon et al.
25 versus Chester A. Arthur, def't in error. Joinder in error. Stewart L. Woodford, United States attorney.

Due service of a copy of the within is hereby admitted. N. Y., Oct. 3, 1877.

STANLEY, BROWN & CLARKE,
Pl'ffs' Attorneys.

Filed Oct. 3, 1877.

JOHN I. DAVENPORT,
Clerk U. S. Circuit Court.

26 UNITED STATES OF AMERICA, *ss:*

To Chester A. Arthur, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the second Monday of October, eighteen hundred and seventy-seven, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the southern district of New York, wherein Solomon Solomon,

Samuel Solomon, and Henry Solomon are plaintiffs in error, and you are defendant in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

Witness the honorable Morrison R. Waite, Chief Justice of the said Supreme Court of the United States, this eleventh day of November, in the year of our Lord one thousand eight hundred and seventy-six.

ALEX. S. JOHNSTON,
Cir. J.

27 (Indorsed:) U. S. Supreme Court. Solomon Solomon et al., plaintiffs in error, against Chester A. Arthur, defendant in error. Original citation. Stanley, Brown & Clarke, att'ys for pl'ffs in error, 16 Wall st. Filed Nov. 11, 1876.

Due service of a copy of the within is hereby admitted.
N. Y., Nov. 11, 1876.

GEORGE BLISS,
U. S. Att'y. P.

(Indorsement on cover:) No. 315. Solomon Solomon, Samuel Solomon, and Henry Solomon, pl'ffs in error, vs. Chester A. Arthur, collector of the port of New York. S. New York C. C. U. S. Filed 17th October, 1877.

REC. 315——2

In the Supreme Court of the United States.

OCTOBER TERM, 1880.

SOLOMON SOLOMON ET AL., v. CHESTER A. ARTHUR.	No. 57.

ERROR TO UNITED STATES COURT, SOUTHERN DISTRICT OF NEW YORK

BRIEF OF PLAINTIFFS IN ERROR.

U. S. Supreme Court.

SOLOMON SOLOMON, LEMUEL SOLOMON, AND HENRY SOLOMON,
Plaintiffs in Error,

vs.

CHESTER A. ARTHUR,
Defendant in Error.

No. 57.

BRIEF FOR PLAINTIFFS IN ERROR.

STATEMENT.

It is disclosed in the record that at the time of the importations in controversy, there were certain textile fabrics known in the trade and commerce of this country, as goods composed of mixed materials, or mixed goods (fol. 16): The mixture was one in which the fibres of silk, cotton, flax and wool, or some of them, were intimately intermingled in the process of manufacture; that in 1873, plaintiffs imported into New York, certain woven goods which were composed of silk and cotton, the filling of which was silk, mixed with cotton, and the warp of which was composed wholly of cotton, and in which the silk was the component material of chief value (fol. 16).

The goods were known in trade and commerce as goods made of mixed materials, and each kind of goods was also

known by a specific name (*Id.*), but no duty appears to have been imposed upon them by such specific name in the tariff acts.

The collector exacted a duty of fifty per cent. *ad valorem* under the last clause of section eight of the Act of June 30, 1864, which is in the following words:

"On all manufactures of silk or of which silk is the component material of chief value *not otherwise provided for*."

Plaintiffs duly protested, appealed and brought suit, claiming that the goods were subject to a duty of only thirty-five per cent. under section twenty-two, of the acts of March 2, 1861, and section thirteen of the act of July 14, 1862. The Act of 1861, after providing for a duty of thirty per cent. on various articles, imposed a duty on "manufactures, not otherwise provided for, composed of mixed materials, in part of cotton, silk, wool or worsted or flax," and the Act of 1862 imposed an additional duty of five per cent. on various articles, and also "on manufactures not otherwise provided for composed of mixed materials, part of cotton, silk, wool or worsted, hemp or flax."

Plaintiffs assign for error.

1st. That the court below instructed the jury to render a verdict for the defendant (p. 6, fol 16).

2d. That the court below refused to instruct the jury to render a verdict for plaintiffs. (*Ib.*)

STATUTES.

"Silk ribbons, &c., &c., and all other manufactures of silk, or of which silk shall be the component material of chief value, not otherwise provided for," thirty per cent. Act of March 2, 1861, § 16, 12 Stat., p. 186.

"Manufactures of silk, or of which silk shall be a component material, not otherwise provided for," thirty per cent. *Id.*, § 22, *p.* 192.

"Manufactures, articles, vessels, and wares not otherwise provided for of brass, copper, gold, iron, lead, pewter,

platina, silver, tin or other metal, or of which either of these metals or other metal shall be the component material of chief value," thirty per cent. *Id.*, § 22, *p.* 192.

" *Manufactures not otherwise provided for, composed of mixed materials, in part, of cotton, silk,* wool, or worsted or flax," thirty per cent. *Id.*

" Manufactures of cotton, linen, silk or worsted, if embroidered or tamboured on the loom," &c., thirty per cent. *Id.*

" Silks, velvets, &c., 30 to 40 per cent," varying as to value. *Act of August* 5, 1861, 12 *stat.*, § 2, *p.* 293.

" Animals living of all kinds; birds singing and other, and land and water fowls." Act of March 2, 1861 (p. 193).

" Flats, braids, plaits, sperterre and willow squares used for hats and bonnets," thirty per cent (p. 192).

" Caps, gloves, leggins, mits, socks, stockings, wove shirts and drawers, and all similar articles made on frames of whatever material composed, worn by men, women and children, and not otherwise provided for," thirty per cent (191).

Same description in Act of 1862, five per cent. additional (p. 556).

" Braces, suspenders, webbing or other fabrics composed wholly or in part of India rubber not otherwise provided for," thirty per cent. Act of March 2, 1861 (191).

Same description in Act of 1862, five per cent. additional (556).

" Silks, ribbons, galloons, braids, &c., &c., and on all manufactures of silk, of which silk shall be the component material of chief value, not otherwise provided for, forty per cent." *Id.*

Act Aug. 5. 1861. 12 Stat 292 p 293

" On braids, plaits, flates, laces, trimmings, sparterre, &c., used for making or ornamenting hats, bonnets and hoods, composed of straw, chip, palm leaf, willow or other vegetable sub-

stance, or of hair, whalebone, or other material, &c.," five per cent. additional. *Act July* 14, 1862 (p. 551).

"Manufactures of India rubber and silk, or of India rubber and silk and other materials, fifty per cent. *ad valorem*." *Id., p.* 552.

Manufactures of bone, shell, ivory, &c., five per cent. additional. 12 *Stat., p.* 557, § 13, *Act of July*, 14, 1862.

Manufactures of paper, &c., five per cent. additional. *Id.*

Manufactures of the bark of the cork tree, five per cent. additional. *Id.*

Manufactures, articles and wares not otherwise provided for, of gold, silver, copper, brass, iron, steel, pewter, tin or other metal, or of which either of these metals or any other metal shall be the component material of chief value, five per cent. additional. *Id.*

Manufactures not otherwise provided for, composed of mixed materials, in part of cotton, silk, wool or worsted, hemp, jute or flax, five per cent. additional. *Id.*

Manufactures of cotton, linen, silk or worsted, if embroidered or tamboured on the loom, &c., five per cent. additional. *Id.*

"On all woolen cloths, woollen shawls, and on all manufactures of wool not otherwise provided for, twenty-four cents per pound and forty per cent. *ad valorem*. *Act of July* 30, 1864, 13 *Stat.* 207, § 5.

On various manufactures of cotton and then "on all other manufactures of cotton *not otherwise provided for*," thirty-five per cent. *Id.* 209, § 6.

On "silk vestings, fringes, scarfs, * * * laces, &c.," and on certain other articles of silk, sixty per cent., and then "on all manufactures of silk or of which silk is the component ma-

terial of chief value *not otherwise provided for*, fifty per cent. *ad valorem*. *Id.* 208, § 10. 8.

"All acts and parts of acts repugnant to the provisions of this act, be and the same are hereby repealed, * * * provided that the duties upon all goods, wares, and merchandise imported from foreign countries, not provided for in this act, shall be and remain as they were, according to existing laws prior to the 29th of April, 1864." *Id.*, p. 216, § 22.

"On all horses, mules, cattle, sheep, hogs, and *other live animals*, 20 per cent. *ad valorem*. *Act of May* 16, 1866, 14 *Stat., p.* 48.

The history of the mixed material clause seems to be this: Prior to 1861, mixed goods that were not specifically provided for were classed under Schedule D of the tariff of 1846 and the similitude section of the Act of 1842, according to their resemblance to other articles in "quality, texture or uses to be applied," &c., and the administration of the law as to mixed material goods was evidently a matter of difficulty and nicety. An official Treasury regulation is to be found in the volume of regulations for 1857, p. 564, in the following words:

"When cotton is combined in a manufacture with other material, the charge of duty must necessarily depend on the description of the articles; thus, apparel or articles worn on the person, composed of cotton and any other material, whether made on frames or otherwise, would pay a duty of thirty per cent.; manufactures of cotton and wool, not otherwise provided for, wool being the component material of chief value, would be chargeable with the same rate of duty; manufactures of cotton and worsted, or cotton and silk, or cotton and flax, not otherwise provided for, would be liable to a duty of twenty-five per cent., under Schedule D of the Tariff Act of 1846, and the 20th section of the Act of 1842."

The provision for mixed goods not otherwise provided for, first appeared in the Tariff Act of 1861 before cited, apparently to simplify classification for duty.

POINTS.

I.

The plaintiffs' goods were plainly and explicitly provided for in the acts of 1861 and 1862, and there can be no doubt that they would have been dutiable under those acts, if imported after their passage, and prior to the passage of the act of 1864.

In the elaborate Tariff Act of 1861, after providing for a great variety of articles, and articles of a great variety of descriptions, the act provides for "manufactures of silk or of which silk shall be a component material of chief value, not otherwise provided for."

That enumeration would have covered the goods in question, except for another subsequent and more specific enumeration in the same act, because these goods were "manufactures" and manufactures too in which "silk was a component material of chief value;" but the subsequent enumeration, to wit: "manufactures not otherwise provided for, composed of *mixed materials*, in part of cotton, silk, wool, worsted or flax," more precisely describes goods like those in controversy, because they are not only manufactures of silk, but they are also those particular manufactures of silk, which are, in the language of the statute, "composed of mixed materials, in part of cotton, silk," &c. In other words, the enumeration is more limited, covering mixed goods, and not covering any manufactures that are not mixed material goods. (The same specific enumeration which is in the Act of 1861 is repeated in the Act of 1862.)

That act was also an elaborate act and full of specific enumerations, and after providing for hundreds of articles, it provided for many different descriptions of manufactures. "Manufactures of bone," &c., manufactures of "paper," "manufactures of the cork tree," and then for "manufactures, articles, vessels and wares of gold, silver, copper, brass, iron, steel, lead, &c., of which either of these metals or any other metal should be the component material of chief value not

otherwise provided for," then for "manufactures, not otherwise provided for, composed of *mixed materials*, in part of cotton, silk, wool or worsted, hemp, jute or flax."

Now, it is to be observed that although manufactures, in which the component materials are different metals, are in fact manufactures of "mixed materials" in a general sense, yet they are not *the* manufactures of mixed materials of the tariffs of 1861 and 1862, or of trade and commerce, because mixed material goods of the tariffs, are limited to those in which the mixture is of "cotton, silk," &c., and the importations in question are expressly admitted to be *the* mixed material goods of trade and commerce (fol. 16).

II.

The importations in question are not dutiable under the provision in the Act of 1864, under which the collector assessed the duties, to wit, "on manufactures of silk, or of which silk is the component material of chief value, *not otherwise provided for*."

This is the same provision except as to rate of duty, that is in the Act of Aug. 5, 1861, the duty being fifty instead of forty per cent., and it is the same provision that is in the Act of March, 1861, except the rate of duty is there thirty per cent. Properly construed, this provision applies to no other or different class of goods in the Act of 1864, than it applied to in the two Acts of 1861. It is perfectly clear, as we have shown, that it did not apply to the mixed material goods of the Act of March, 1861, or of July, 1862. In the Act of 1862, mixed material goods were singled out, and the duty increased on them five per cent., but there was no increase upon goods of which "silk was the component material of chief value, not otherwise provided for."

III.

The provisions relating to mixed goods in the Acts of 1861 and 1862 were not repealed by the Act of 1864

Arthur vs. *Zimmerman*, 96 *U. S.*, 124.
Arthur vs. *Unkhart, Id.*, 118
Arthur vs. *Lahey, Id.*, 112.
Arthur vs. *Davies*, 96 *U. S.*, 135.
Smythe vs. *Reiche*, 13 *Wallace*, 162.
Homer vs. *The Collector*, 1 *Wallace*, 486, *and the long list of earlier cases on commercial designation.*
Homer is Arthur 96 U.S. 137.

The twenty-second section of the Act of 1864 distinctly specifies what acts and parts of acts are repealed, and they are only "those acts and parts of acts that are repugnant to the provisions of this act."

This provision conveys the necessary implication that those acts and parts of acts that are not repugnant to the provisions of the Act of 1864 are not repealed. Statutes are not to be construed to be repugnant, if it is possible to give effect to both. One part of a statute must be so construed by another, that the whole may, if possible, stand *ut res magis valeat quam pereat*, and this, says Story, is merely a rule of common sense.

Dwarris on Stat., p. 189.
Sedgwick on Statutes, pp. 126, 127.
Homer vs. *The Collector, supra.*

There is no difficulty in so construing the two provisions here in question as to give effect to both, to wit, by making the one provision applicable to all goods known in trade and commerce as mixed goods, made partly of silk and partly of cotton, wool, or worsted or flax, and the other as applying to goods not known in trade and commerce as mixed goods, but goods other than mixed goods, in which silk was the component material of chief value.

That was the correct construction of the similar provisions in the two Acts of 1861 and the Act of 1862.

According to well settled rules for the construction of revenue statutes, the provision "on all manufactures of silk or of which silk is the component material of chief value," not

otherwise provided for, is not repugnant to the prior provisions imposing a duty on manufactures composed of mixed materials, in part of cotton and in part of silk, &c., because the mixed material goods were "otherwise provided for" by a specific descriptive enumeration, which limited and confined the duty to a particular and restricted class of articles, to wit: that class of textile fabrics which were "not otherwise provided for," and which were known in trade and commerce as manufactures of mixed materials.

Mr. Justice HUNT, in Movius *vs.* Arthur, 95 U. S., 144, says: "It is a general rule in the construction of revenue statutes that specific provisions for duties on a particular subject are not repealed or affected by the general words of a subsequent statute, although the language is sufficiently broad to cover the subject first mentioned."

If the wording of the statutes of 1861 and 1862 in regard to mixed goods had been as follows, on "mixed goods," instead of on "manufactures composed of mixed materials of cotton, silk," &c., then it will be conceded that the duty would not have been changed by the silk provision in the Act of 1864. In the thread lace case, the duty on thread lace made of silk in the same Acts of 1861 and 1862, of thirty per cent., was not changed by the silk provision, which was on "silk laces" sixty per cent., nor by the last general clause "on all other manufactures of silk not otherwise provided for, fifty per cent."

See Arthur *vs.* Lahey, *supra.*

But on principle there is no sound reason for holding that Congress intended to change the duties on mixed goods any more than on thread lace, by the silk provision in the Act of 1864.

The only difference between the two cases is, that in the one case the goods are enumerated by a *specific* name, and in the other by a *specific* description. The reason of the rule that words of general description shall not be construed to include articles that have been designated in the tariffs by a specific name, applies just as much to the case where articles have been designated by a specific description. The substance of the idea in both cases is that where certain language has been used in a tariff act to cover articles which are designated in trade and commerce by the same terms, that

a subsequent act of general description, which may be broad enough to include those terms, shall not be construed to include them, unless the intention of Congress is expressly manifested, as in the little Tariff Act of 1875, for instance, where the provision is "on all goods, wares and merchandise not otherwise *herein* provided for, made of silk or of which silk is the component material of chief value, *irrespective of the classification thereof for duty by or under previous laws, or of their commercial description.*"

18 Stat., p. 307.

The Treasury Department does not pretend that the provision for "manufactures of cotton, linen, silk, wool, or worsted, if embroidered or tamboured on the loom," &c., which is the provision in the Act of 1861, that is next to the provision for mixed goods, has been repealed by the provision in question in the Act of 1864, as may be seen by the decision of the Treasury Department No. 4523, p. 145, in their synopsis of decisions, as follows:

COTTON SCARFS, WITH SILK EMBROIDERED ENDS—DUTY ON.

TREASURY DEPARTMENT,
May 13, 1880.

Sir,—This department is in receipt of your report of the 3d instant, upon the appeal (6447f.) of Spielman, Wolff & Co., from your decision assessing duty at the rate of 60 per cent., *ad valorem*, on certain embroidered cambric scarfs imported by them, per *Cimbria*, December 17, 1879.

The appraiser reports that the scarfs were composed of cotton, with embroidered silk ends, and are identical, as to character and the value of the component material contained therein, with the neck ties mentioned in the decision of January 20, 1879 (synopsis 4404), relating to an importation of Messrs. Mills & Gibbs. In the latter case the articles contained 38 per cent. in value of cotton, and were treated as dutiable, at the rate of 35 per cent., *ad valorem*, as embroidery, under the provisions of the tariff for manufactures of cotton, linen, or silk, if embroidered or tamboured on the loom or otherwise by machinery, or with the needle, or other process not otherwise provided for.

You will, therefore, readjust the entry and take the usual measures for a refund of the duties levied in excess of 35 per cent. *ad valorem*.

It should be noticed that such articles imported since February 8, 1875, having silk as the component of chief value, are dutiable at the rate of 60 per cent., *ad valorem*, unless they also contain as a component material 25 per cent. or over in cotton, flax, wool, or worsted.

Very respectfully,

H. F. FRENCH,
Acting Secretary.

COLLECTOR OF CUSTOMS,
New York.

In the embroidered scarf case above, silk was the "component material of chief value, and was not otherwise provided for," unless it was provided for in the provisions for "manufactures of cotton," &c. in the Acts of 1861 and 1862. That was a specific descriptive enumeration of the articles, just as in the case at bar.

We repeat the Supreme Court has held that the duty on thread lace, under the Statutes of 1861 and 1862, was not repealed by the silk clause of 1864, notwithstanding the lace was a manufacture wholly of silk.

Arthur *vs.* Lahey, *supra.*

They have also held that the provisions for "braces, suspenders, webbing, and other fabrics composed wholly or in part of india rubber, not otherwise provided for," in the same Acts of 1861 and 1862, although in them cotton was the component material of chief value, were not repealed by the eighth section of the Act of 1862, "providing for manufactures of india rubber and silk or of india rubber and silk and other materials, fifty per cent."

Arthur vs. *Davies, supra.*

They also held that the descriptive enumeration in the Acts of 1861 and 1862, for "caps, gloves, &c., &c., and all similar articles made on frames, of whatever material composed, worn by men, women and children, and not otherwise provided for" was not repealed by the Act of 1864.

Arthur vs. *Unkhart, supra.*

The same court also held that the specific descriptive provision for "braids, plaits, flats, &c., &c., used for making or ornamenting hats, bonnets and hoods," in the Acts of 1861 and 1862, were not repealed by the general cotton clause in the Act of 1864.

Arthur vs. *Zimmerman, supra.*

IV.

The case of Smythe *vs.* Fiske is relied upon by the Government as conclusive upon the question of error in the court below, in ruling that under no circumstances could reference be had to the Acts of 1861 and 1862, to determine the duty payable upon mixed goods, composed of silk and cotton; but the authority of that case has been shaken by a large number of subsequent cases which have explicitly held that specific descriptive provisions in the Acts 1861 and 1862, were not repealed by the general provisions for silk goods nor by the general provision for cotton goods.

Many of these were cases where an enumeration not by name, but by specific description, was held not to be repealed by words of general description.

It is understood that that cause was not orally argued, and that the court placed the decision upon different grounds from those taken upon either side at the trial, or suggested by either party in their respective briefs. It is possible in such a case that the court, unaided by the researches of counsel, may have overlooked important considerations.

It is quite clear that the third view taken by the learned judge who delivered that opinion was not the view of the Collector, or of the Attorney-General. This view was that the words "not otherwise provided for" in the eighth section of the Act of 1864, in the clause, "on all manufactures of silk or of which silk is the component material of chief value not otherwise provided for," should read as if the word "herein" were interpolated, and so that the provision would read "not *herein* otherwise provided for."

There has scarcely been a tariff for fifty years to which this construction might not have been applied, as well as to the 8th section of the Act of 1864. The rule heretofore has been, that revenue statutes should be construed together, and the case in question is the first one in which it has been held that they were to this extent even to be construed separately, unless it was otherwise expressly provided in the statute.

There is no reason assigned by the court for the construction advanced. The unsupported assertion in Smythe *vs.* Fiske, that the so-called silk clause was intended to be exhaustive, is

negatived by the act itself, which elsewhere provides for "flannels composed in part of silk" (page 208), and on lastings silk for shoes and buttons (page 214).

And see Arthur *vs.* Lahey, p. 117, on this point.

Again, the construction advanced is not the natural construction of the language used; and the insertion of the very important word "herein" changes entirely the natural meaning of the term which Congress did use.

The phrase "not otherwise provided for," in prior acts had never received such a construction, but the courts had uniformly held that the revenue acts were one system and to be read together.

Stewart *vs.* Maxwell, 16 How., 150, 160.
Pennington *vs.* Coxe, 2 Cranch., 33.
Potter's Dwarris on Statutes, 189, and notes.

The uniform action of the Treasury Department has been in harmony with this view.

No acute importer or astute revenue lawyer, or Secretary of the Treasury, or collector in the country, had ever raised the question when the same words were used in tariff acts reducing or increasing the duties.

Substantially the same words which are in the silk clause of 1864, were used in the silk clause in the Act of August 5, 1861, which was an act to provide increased revenue upon imports, and likewise in the silk clause in the Act of March 2, 1861; also in the Act of 1846, schedule D, "manufactures of silk or of which silk shall be a component material not otherwise provided for, 25 per cent."

The same words were in the Act of August 30, 1842, to provide revenue and change and modify duties.

"All manufactures of silk not otherwise specified except, &c., two dollars and fifty cents a pound." Then follows a great variety of articles, thirty or forty in number, made of silk, at special rates, concluding, "and all other articles of silk made up by hand in whole or in part, and not otherwise provided for, thirty per cent." (5 Stat. at Large, 550.)

Now in all these Acts of '42, '46, '61 and '64, in which the above terms are used, silk articles are enumerated, either by their specific names, or by specific descriptive terms in

different sections of these acts, from what may be termed the silk section. This, we submit, demonstrates absolutely that it has not been the purpose of Congress, in either of these acts, to include all articles made of silk in the classification of manufactures of silk, not otherwise provided for, at a uniform rate of duty, or not provided for as stated in Smythe *vs.* Fiske, "by the preceding parts of the section of which they made the closing words."

The word "*herein*" was inserted after "not" in the Act of July 14, 1870, 14 Stat., p. 264, by a subsequent special Act of Congress.

16 *Stat., p.* 592.

Again, we respectfully submit that there is no sufficient evidence, nor can it be reasonably presumed that Congress intended that importers should find in this statute, as passed by Congress, an unexpressed word so important that with it in, goods are made dutiable at a higher rate than they might be with it out.

There is no denying that the construction criticised does interpolate the word "herein."

The phrase in a revenue statute "not otherwise provided for," is not in the natural signification of the language limited to a present provision made the instant the law is passed, by the law itself. It does not mean not otherwise provided for in any such limited, restricted sense, but naturally means not otherwise provided for in existing tariff acts. If at that time the goods are in any way in an existing act, actually "otherwise provided for," different from manufactures of silk, &c., then, by the express terms of the act, they are excluded from the classification and rate of duty affixed to "manufactures of silk." And to determine what is an existing law, when "not otherwise provided for" is used, we must look at the state of the law just before the term is used.

It is a general rule not to add or interpolate a word in a statute so as to change the construction.

Potter's Dwarris on Stat., 199.
Sedgwick on Stat. 245–6, and cases cited.

Congress, in this very act, shows its knowledge and consideration of the effect of the use of the word "herein."

Section 5, 13 Stat. at Large, 207, near middle, provides "that goods of like description, composed of worsted, the hair of the alpaca, &c., &c., shall pay the same duties and rates of duty *herein* provided for woolen cloths."

Section 2 provides that in lieu of duties heretofore imposed by law on the articles hereinafter mentioned, there shall be levied, collected and paid on the goods, wares and merchandise enumerated and provided for *in this section.*

So again the draughtsman shows his knowledge of the effect of the insertion or omission of the word "herein" by its use in the thirteenth section, page 214, where it is used as follows:

"On meerschaum, wood, porcelain, lava, and all other tobacco smoking pipes and pipe bowls not *herein* otherwise provided for, one dollar and fifty cents per gross."

By what process of reasoning could the word "herein" be stricken from this section?

An examination of other tariff acts will show similar results.

And the twenty-second section of this Act of 1864 shows not only that Congress did not intend it to be a comprehensive tariff act, but that the draughtsman had the existing laws in mind, and that he knew, or should have known, their provisions. (See proviso attached to 22nd Section, 13 Stat. at Large, 216.)

The fact that the word "herein" and words of similar import, to limit a provision to the section or to the act, are used in some cases and omitted in others, proves that Congress knew its signification, and it is not consonant with sound rules of construction arbitrarily either to insert or omit it in a given case.

Therefore, we repeat, that Congress did not intend the Act of 1864 to be general in the sense that it should cover all dutiable articles, of which silk was the component material of chief value, and that the word "herein" ought not to be interpolated to mean "herein in this act or in this section."

But this case, Smythe *vs.* Fiske, has not the broad effect claimed for it by counsel for the defendant. In the language of Mr. Justice HUNT (96 U. S., 115):

"That case was not intended to overrule Homer *vs.* The Collector, or Reiche *v.* Smythe (*supra*), or the cases referred to in those authorities; nor was Morris *vs.* Arthur (*supra*) under-

stood to be in conflict with it. Smythe *v.* Fiske simply decided that silk ties, not being specifically enumerated in any of the acts, either of 1864 or of preceding years, the rate fixed by the Act of 1864 was the correct rate for their assessment."

That it is not applicable as an authority here is further evidenced by the large number of cases since decided, and decided since this cause was tried below, in which the construction of the silk clause and the cotton clause has arisen, and various provisions in the Acts of 1861 and 1862 providing for silk and cotton goods have been distinctly held to have remained unrepealed by the Act of 1864.

STEPHEN G. CLARKE,
WILLIAM STANLEY,
Of Counsel for Plaintiffs in Error.

EVENING POST PRINT, 208 B'way, N. Y.

THE

Supreme Court of the United States.

SALOMON

vs.

ARTHUR.

Reply to the Attorney-General's Brief.

EDWARDS PIERREPONT for Plaintiff in Error.

The Brief of the Attorney-General, p. 2 , reads:

"The goods in question were composed of silk and cotton, in varying proportions, the warp being all cotton and the filling partly silk. It is admitted by the plaintiffs, for the purpose of this case, that the silk was the component material of chief value. Said goods generally are known in trade and commerce as goods made of mixed material; but each kind thereof is also known by its specific name."

Dft's. Brief, p. 2, Record p. 5.

It is plain that *the commercial designation* of the importation was "GOODS MADE OF MIXED MATERIALS." A commercial designation is a designation "*known in trade and commerce.*"

The statutes distinctly recognize two kinds of dutiable goods, into one of which *silk must enter*, and *be* "*the component material of chief value,*" and a totally distinct kind of "*mixed*

goods" into which silk may not enter *at all*, or may enter in part, as the case may me.

The first kind is described thus:

"On silk ribbons, galloons, braids, fringes, laces, tassels, buttons, button cloths, trimmings, and on silk twist, twist composed of mohair and silk, sewing silk in the germ or purified, *and all other manufactures of silk or of which silk shall be the component material of chief value*, not otherwise provided for, thirty per cent., *ad valorem*."

Act of March 2, 1861, 12 Stat., p. 186, sec. 16 (middle).

In the same statute, p. 192, sec. 22 (middle), is mentioned the other kind in these words: "Manufactures, not otherwise provided for, COMPOSED OF MIXED MATERIALS, *in part* of cotton, silk, wool, or worsted or flax."

The duty imposed by this act was 30 per cent. on each kind.

On the 5th of August following, the Congress raised the duty on the *silk goods* to 40 per cent., but left the "*mixed goods*" 30 per cent. The enumeration of the silk goods on which they raised the duty to 40 per cent. is *precisely* the same, word for word, as in the Act of March.

See this Act of Aug. 5, 1861, 12 Stat., p. 293, sec. 2 (end of section).

By the Act of July 14, 1862, sec. 13, p. 557 (near top), the duty on "manufactures composed of *mixed materials*, in part of cotton, silk, wool, or worsted, hemp, jute, or flax," was raised to 35 per cent.

No higher duty than 35 per cent. had ever been imposed by any statute upon this class of goods. And it is here to be noted, that this statute of July 14, 1862, which *increased* the duty on "manufactures composed of mixed materials," did not change the duty upon goods of which silk was the component material of chief value.

The attempt is now made to strain the statute of 1864, relating to *silk goods*, to cover "manufactures composed of mixed materials," into which silk may so enter as to form the more costly part.

After enumerating some thirty silk manufactures, the section ends in these words:

"On all manufactures of silk, or of which silk is the component material of chief value, *not otherwise provided for*, fifty per cent. *ad valorum*.

13 Stat., p. 210, sec. 8.

The class of goods "*known in trade and commerce as goods made of mixed materials*," which are specifically named in the other statutes, and upon which the duty was in 1861, 30 per cent., and which in 1862 was raised to 35 per cent., is no where alluded to in this statute of 1864. But the act expressly provides "that the duties upon all goods, wares and merchandise imported from foreign countries not provided for in this act, *shall be* and *remains as they were*, according to existing laws prior to the 29th of April, 1864."

(The date of this act.)

13 Stat., p. 216, sec. 22 (end).

And *before* this proviso, at the beginning of the same section, it is enacted, "that all acts and parts of acts *repugnant* to the provisions of this act be and the same are hereby repealed."

13 Stat., p. 216, sec. 22.

Thus we find, running through the statutes, these *two classes* of manufactures:

The silk manufactures into which silk *must* enter, and the "mixed manufactures" into which silk might or might not enter. And in this case it is admited as a fact, that "said goods are generally known in *trade and commerce* as goods made of mixed materials." (Record, p. 6.) It is also admitted that in these "mixed goods" "silk was a component material of chief value," and hence it is argued by the learned Attorney-General that these "mixed goods" must pay a duty of 50 per cent. under the Act of 1864, which relates to a totally different kind of goods.

Surely no such construction can fairly be given to the acts, and such ruling would be quite out of harmony with numerous decisions of this court cited upon the brief.

The case of Arthur *vs.* Lahey (96 U. S., 112), was the "thread lace" case, where the proof was that the lace was made entirely of silk, and where the statute imposed a higher

duty upon silk lace than upon thread lace; it appearing that this kind of lace "was known in trade and commerce" as thread lace, though all of silk, and though the statute of 1864 imposed a higher duty "on all manufactures of silk or of which silk is the component material of chief value," yet the court held that the article "known in trade and commerce" as thread lace was only subject to the lower duty.

The case of Arthur *vs.* Homer, 96 U. S., 137–40, seems conclusive of this case.

Movius *vs.* Arthur, 95 U. S., 144, was the case of leather, where the importer tried to reduce the duties imposed under the acts of 1861 and 1862, by invoking the statute of June 6, 1872, 17 Stat., 230. This case sustains the case at bar.

Garfield *vs.* Goodrich, 101 U. S., 278, has no bearing upon the present case.

(See head note).

There seems to be an idea that this statute of 1864 in some manner repealed previous revenue acts. Section 22 reads: "That all acts and parts of acts repugnant to the provisions of this act be, and the same are hereby repealed."

That is all: 13 Stat., p. 216, sec. 22. In Arthur *vs.* Lahey, 96 U. S,, 112, this court held that the duty on thread lace imposed by the statutes of 1861–2 was not changed, nor were those acts repealed by the silk provision in the statute of 1864, though the lace in question was wholly of silk.

In Movius *vs.* Arthur, 95 U. S., 144, this court say:

"It is a general rule in the construction of revenue statutes that specific provisions for duties on a particular subject are not repealed or affected by the general words of a subsequent statute, although the language is sufficiently broad to cover the subject first mentioned."

This court have never allowed the importer to be entrapped by the ambiguous wording of a revenue statute. It is easy for Congress to clearly express its intention. The Tariff Act of 1875 imposes duties "on all goods, wares and merchandise not otherwise *herein* provided for, made of silk, or of which silk is the component material of chief value, *irrespective of the classification thereof for duty by or under previous laws, or of their commercial description.*"

18 Stat., p. 307.

Smythe *vs.* Fiske, as I notice, is cited by the Department of Justice in almost every revenue case. In 96 U. S., 115, this court takes some pains to state very exactly what was intended to be decided in that case:

The Court say:

"That case was not intended to overrule Homer *vs.* The Collector, or Reiche *v.* Smythe, or the cases referred to in those authorities; nor was Morris *vs.* Arthur understood to be in conflict with it. Smythe *v.* Fiske simply decided that silk ties, not being specifically enumerated in any of the acts, either of 1864 or of preceding years, the rate fixed by the Act of 1864 was the correct rate for their assessment."

Smythe *vs.* Fiske has no application to the present case. Since this case was tried, several cases have been decided by your Honors in which it has been distinctly held that the provisions of the Statutes of 1861, 1862, were not repealed by the Act of 1864.

The case cited by the Attorney-General, Movius *v.* Arthur, 95 U. S., 147, relates to leather, and the decision refers to the Act of 1872, not to the Act of 1864.

EDWARDS PIERREPONT,
Of Counsel for Plff. in Error.

OFFICE SUPREME COURT U. S.
FILED
JUL 14 1880
JAMES H. McKENNEY, Clerk.

In the Supreme Court of the United States.

OCTOBER TERM, 1880.

SOLOMON SOLOMON ET AL.
v.
CHESTER A. ARTHUR. } No. 57.

ERROR TO UNITED STATES CIRCUIT COURT, SOUTHERN DISTRICT OF NEW YORK.

DEFENDANT'S BRIEF.

In the Supreme Court of the United States.

OCTOBER TERM, 1880.

SOLOMON SOLOMON ET AL.
v.
CHESTER A. ARTHUR. } No. 57.

ERROR TO UNITED STATES CIRCUIT COURT, SOUTHERN DISTRICT OF NEW YORK.

DEFENDANT'S BRIEF.

STATEMENT.

"It is agreed that the following facts shall be admitted in evidence upon the trial of this case, and that neither party shall offer any other evidence: Plaintiffs are partners in business, and as such partners imported and made entry thereof at the port of New York, in January, 1874, and December, 1873, certain goods manufactured of silk and cotton. The defendant, the collector of the port, exacted upon these goods a duty of 50 per centum ad valorem, which rate of duty the plaintiffs paid under pro-

test, the substantial part of which protest is as follows: claiming that under existing laws said goods are only liable to a duty of 35 per cent., because said goods are provided for at that rate by the acts of March 2, 1861, sec. 22, and of July 14, 1862, sec. 13. This protest was filed in due time, was followed by an appeal to the Secretary of the Treasury, and the Secretary having affirmed the decision of the collector, this suit was brought in due time.

"The goods in question were composed of silk and cotton, in varying proportions, the warp being all cotton and the filling partly silk. It is admitted by the plaintiffs, for the purpose of this case, that the silk was the component material of chief value. Said goods generally are known in trade and commerce as goods made of mixed material; but each kind thereof is also known by its specific name. If the plaintiffs are entitled to recover, they are entitled to the difference between 35 and 50 per cent., which amount is $461.75 gold, with $75.40 interest in currency." (Record, 5, 6).

Both parties moved for an instruction for a favorable verdict, and one being directed for the defendant, the plaintiffs excepted. (*Id.*, 6.)

STATUTES.

The collector assessed the duty in question under the last clause of section 8 of the act of June 30, 1864: "On all manufactures of silk, or of which silk is the component material of chief value, not otherwise provided for, 50 per centum ad valorem." (13 Stats., 210, middle.)

The plaintiffs conceived their goods to be dutiable under the acts of March 2, 1861, c. 68, § 22, and of July 14, 1862, c. 163, § 13. The former imposes thirty per

centum on "Manufactures, not otherwise provided for, composed of mixed materials, in part of cotton, silk, wool, or worsted, or flax." (12 Stats., 192, middle.) The latter placed an additional five per centum on "Manufactures, not otherwise provided for, composed of mixed materials, in part of cotton, silk, wool, or worsted, hemp, jute, or flax." (*Id.*, 557, near the top.)

BRIEF.

If, under the acts of 1861 and 1862, these importations were dutiable at 35 per cent., that of June 30, 1864, superseded all earlier provisions, and raised the duty to fifty per centum ad valorem.

That such was the effect of this later statute has been expressly determined by this court, in the case of Smythe *v.* Fiske. (23 Wallace, 374.)

The section referred to affixes a duty of 50 per cent. to *all* manufactures of which silk is the component material of chief value, not otherwise provided for. The articles brought in by these plaintiffs, as matter of fact, were such manufactures. (Record, 5, 6.) That they were otherwise provided for in prior legislation is immaterial. There was no other provision applicable to them in this act of 1864. Therefore they must pay 50 per cent. under the above-quoted clause.

"The phrase 'not otherwise provided for' was interposed and meant to apply *not to preceding acts*, which may not have been present to the mind of the draftsman and to which there was no necessity to recur, but to the preceding enumeration in the same section, which it supplemented. The section, thus construing this clause, covers the whole subject of silk, in all its variety of forms. It was complete itself. *There was no need to refer generally or specially to any prior act.* If there was a conflict, the prior legislation yielded, necessarily, *ipso facto* to the later." (Smythe *v.* Fiske, 23 Wall., 381.)

Affirmed, as to this point, or that it means "not pro-

vided for in this act," in Movius *v.* Arthur. (95 U. S., 147, middle.)

The evidence is that "said goods are generally known in trade and commerce as goods made of mixed materials, *but each kind thereof is also known by its specific name.*" (Record, 6, top.)

They are composed of silk and cotton, in varying proportions, the warp being all cotton and the filling partly silk." (*Id.*, 5, bottom.) Those who trade in the article are no more ignorant of the obvious mixture of the component materials than are the lady customers, who readily ascertain, by sight and touch, the difference in the threads. Thus, to everybody, "in trade and commerce," as well as out of it, they are known to be "goods made of mixed materials." This phrase, however, is not a commercial designation within the meaning of the decisions upon tariff laws, any more than that of "wearing apparel" (16 Howd., 260) or "goods of a similar description" (Greenleaf *v.* Goodrich, No. 127, last term).

It is the "specific name" which is the commercial designation. The particular article, and not the quality common to a class, must be indicated by it. If the goods in question had been specifically enumerated in the acts of 1861 and 1862, they would not have been touched by the general clause in section 8 of the act of June 30, 1864; as they were not thus mentioned in the earlier they do come within this provision of the later act. (Movius *v.* Arthur, 95 U. S., 144; Arthur *v.* Morrison, 96 U. S., 108; Arthur *v.* Unkart, *Id.*, 118; Arthur *v.* Zimmerman, *Id.*, 124; Arthur *v.* Stephani, *Id.*, 125; Arthur *v.* Davies, *Id.*, 135; Arthur *v.* Rheims, *Id.*, 143; and many earlier cases.)

Should any reply to the plaintiffs' brief (not yet filed) be found necessary, it will take the form of a supplemental brief.

EDWIN B. SMITH,
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